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HIGH COURT OF CHHATTISGARH, BILASPUR

Single Bench:- Hon'ble Shri Justice Dhirendra Mishra

Misc.Appeal No.818 of 2004 CR 48/2005

Applicant :- **South Eastern Coalfields Ltd. through its Chairman-cum-Managing Director, Seepat Road, Bilaspur**

Vs

Respondents :- **1. M/s Niranjan Sarkar Contractors, a partnership firm duly registered under the Partnership Act, 1956 having its Head Office at Durga Bhawan, Tikrapara, Bilaspur.**

2. The Arbitrator, Shri Kuppuswami, Chief General Manager (Civil)

Applicant by Dr.N.K.Shukla, Sr.Advocate with Shri Shailendra Shukla, Advocate.
Respondnets by Shri V.R.Rao with Shri Prafull Bharat, Advocates.

JUDGEMENT
(Delivered on 8/4/2005)

Heard on admission.

2. The instant misc. appeal under Section 39 of the Arbitration Act, 1940 has been preferred by the applicant/Company against the impugned order dated 29.06.2004 passed by District Judge, Bilaspur in M.J.C.No. 43/2002 and by which the Court below has appointed a sole arbitrator for adjudication of the disputes between the parties.

3. On 09.03.2005 when the case was listed for arguments, learned counsel for the applicant moved an application I.A.No.669/2005 under Section 151 of the C.P.C. and prayed for conversion of the appeal into revision on the ground that the appeal is not maintainable as the order under Section 12 of the Arbitration Act, 1940 is not appealable under Section 39 of the Act, 1940. The above application was not opposed by learned counsel for the respondent and the parties were heard on merits of the case.

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4. Hence, the application I.A.No. 689/2005 is allowed. Office is directed to convert the instant appeal into revision and register the same as revision.

5. Brief facts involved in the case is that there is an arbitration agreement between the parties having an arbitration clause. Respondent No.1 filed an application under Section 20 of the Arbitration Act, 1940 for appointment of arbitrator as per provisions of agreement entered into between the parties. Learned District Judge, Bilaspur vide order dated 26.07.1996 directed the respondent No.1 to file the agreement in the Court and thereafter directed the Chairman-cum-Managing Director of the SECL to nominate arbitrator for adjudication of dispute between the parties vide order dated 26.04.1996 who shall submit the award within four months from the date of receipt of copy of the order.

6. That, SECL challenged the above order of the District Judge, Bilaspur in the High Court of Madhya Pradesh which was registered as Misc. Appeal No 1205/1996 and the same was dismissed vide order dated 08.10.1996.

7. That, as per order of the District Judge, Shri J.P.Thakur, Chief Engineer (Civil), SECL, was appointed as arbitrator to adjudicate the dispute between the parties vide order-dated 13th/14th June 1997. The sole arbitrator entered upon a reference, called upon the parties to file claim details, the written statement, recorded evidence and heard arguments of both the parties and thereafter, he was transferred from SECL Bilaspur to (Welfare) WCL Coal Estate Civil Lines, Nagpur where he held several sittings at Nagpur. However, learned sole arbitrator vide his letter dated 24th /25th.04.2004 expressed his inability to proceed with arbitration proceedings due to non-supply of secretarial charges, typing, stationery by respondent No.1.

8. That, the respondent No.1 addressed a letter dated 26.02.2002 to the Chairman-cum-Managing Director, SECL, revealing the aforesaid facts, to fill the vacancy to carry on the arbitration proceedings and to substitute the sole arbitrator Shri J.P.Thakur. However, the above letter was not replied and thereafter, respondent No.1 moved an application under Section 12 of the Arbitration Act, 1940 before the District Judge, Bilaspur to appoint an arbitrator in place of Shri J.P.Thakur for finalizing the arbitration proceedings to pass an award.

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9. That, after hearing the parties, the learned District Judge, Bilaspur vide impugned order dated 29.06.2004 allowed the application and directed the non-applicant/respondent No.1 to appoint Shri Kuppuswami, CJM (Civil) M.C.L., in place of Shri J.P.Thakur, General Manger (Welfare) WCL Coal Estate Civil Lines, Nagpur, the sole arbitrator.

10. That, the applicant being aggrieved by the above order has preferred this appeal/revision.

11. Learned counsel for the applicant submits that the instant application has been preferred under Section 12 of the Arbitration Act, 1940 whereas the Act of 1940 stands repealed vide Section 85 of the Arbitration and Conciliation Act, 1996 and therefore, the application under Section 12 of the Act of 1940 was not maintainable before the District Judge as the arbitral proceedings commenced after coming into force the Arbitration and Conciliation Act, 1996. Therefore, the provisions of the Act of 1996 will apply. It is further submitted by the applicant that sole arbitrator appointed in pursuance of the order of District Judge, did not pass award within four months as stipulated in the order and no steps were taken either by the arbitrator or by the parties, for extension of time, as such the arbitrator has lost his jurisdiction and therefore, the case is barred by law of limitation.

12. That, the CMD, SECL has already appointed arbitrator as per directions of the District Judge and therefore, the arbitrator can not be appointed by the CMD unless he is ordered to do so by the Hon'ble Chief Justice of M.P. High Court under Arbitration and Conciliation Act, 1996. It is further submitted by the applicant that the District Judge ought to have directed the Chairman-cum-Managing Director, SECL to appoint a fresh arbitrator or to get the panel of arbitrators from both the parties but the learned District Judge arbitrarily appointed the arbitrators from the list supplied by respondent No.1 in application filed under Section 12 of the Arbitration Act, 1940.

13. On the other hand, learned counsel for the respondents submits that arbitration proceedings were initiated even before coming into force of the Act of 1996 and as per Section 85 (2) of the Act, provisions of old act shall apply in relation to the arbitration proceedings which commenced before the said Act came into force unless otherwise agreed by the parties as the

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present arbitration proceedings were initiated before coming into force the new Act of 1996, the provisions of Act of 1940 shall apply in relation to the instant arbitration proceedings.

14. It is not disputed by learned counsel for the applicant that the arbitration proceedings started even before coming into force of the new Act.

15. In view of the above, the contention of the applicant that the provisions of Section 12 of the Act of 1940 was not available to the applicant has no force. The other submission of the applicant that the time allotted to the sole arbitrator was a period of four months and it has already expired and there was no extension either at the instance of the parties or at the instance of the arbitrator and as such the present application is barred by limitation, is also without any substance as it is admitted by the applicant that they had been participating in the arbitration proceedings before the arbitrator even after expiry of the period of four months.

16. The next submission put forth by the applicant that as per arbitration Clause, the appointment of arbitrator is to be done by the CMD of the SECL has also no force because the contractors had sent a notice to the Chairman-cum-Managing Director, the appointing authority on 26.02.2002 to fill the vacancy to carry on the arbitration proceedings on the ground that the sole arbitrator has refused to arbitrate. However, as CMD did not reply to the said notice and failed to take any step in pursuance of the said notice, now it is not open to the applicant / SECL to contend that CMD is only competent to appoint the sole arbitrator.

17. Considering the arguments of the parties and further considering the fact that SECL from the beginning was not inclined to refer the dispute to the arbitrator and arbitrator was appointed only after the revision of the applicant was dismissed by the High Court and arbitrator was appointed as per order of the District Judge, I am of the opinion that the contention of the applicant that CMD, SECL should be directed for appointment of arbitrator has no force.

18. However, learned counsel for the respondents submits that taking into consideration the valuation of the claim, it would be just and proper if the dispute is referred to some retired Judge of the High Court of Chhattisgarh

or Madhya Pradesh for adjudication as sole arbitrator. Learned counsel for the applicant has no objection.

19. While reserving the order, after conclusion of the arguments, I had asked learned counsel for the parties, that in case it would be found that an arbitrator is to be nominated, would it be possible to indicate any name to which both may agree. Learned counsel for both the parties responded that any Hon'ble retired Judge of High Court of C.G. or High Court of M.P. may be appointed arbitrator and they do not have any objection.

20. As a result, the revision is disposed of with a modification in the impugned order that in place of Shri Kuppuswami, CJM (Civil) M.C.L., Hon'ble Mr. K.L.Shrivastava, former Judge of High Court of M.P., C/o Shri A.K.Shrivastava, Officiating District & Sessions Judge and Special Judge under Scheduled Castes & Scheduled Tribes (Prevention of Atrocities Act), Raipur is appointed the sole arbitrator.

21. The Hon'ble Arbitrator may settle his terms and conditions and remuneration.

22. The District Judge, Bilaspur to intimate Hon'ble Mr. K.L.Shrivastava, about his appointment as Arbitrator and to send all the papers along with address of the parties.

23. Parties are also directed to approach Hon'ble Mr.K.L.Shrivastava, who is presently residing at Raipur and to submit papers and to take part in the arbitration proceedings.

Sd/-
Dhirendra Mishra
Judge